



DEPARTMENT OF INSURANCE  
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Jim Poolman  
Commissioner of Insurance

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## BULLETIN 2001-2

To: All companies authorized to market small-employer insurance in North Dakota  
From: Jim Poolman, Insurance Commissioner  
Date: May 29, 2001  
Re: Bulletin 2001-2 — Delay in issuance of small-employer coverage

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### SCOPE AND APPLICABILITY

It has come to our attention that some companies authorized to market small-employer health insurance in North Dakota are delaying or denying the issuance of small-employer insurance to a business that did not exist in the prior calendar year. The purpose of this bulletin is to clarify the statutory definition of "small-employer" so that insurers correctly comply with N.D. Cent. Code § 26.1-36.3-06 — **Availability of coverage**. This bulletin applies to all companies authorized to market small-employer health insurance in North Dakota.

### DELAY IN ISSUANCE OF SMALL-EMPLOYER COVERAGE

When issuing coverage to small employers, some companies are misinterpreting the definition of a "small employer" as defined by the federal Health Insurance Portability & Accountability Act (HIPAA), and by N.D. Cent. Code § 26.1-36.3-01(35). The definitions have been misread to mean that a small employer must have been in existence during the previous calendar year to qualify for coverage; however, the small-employer definition only defines a small employer, but does not define when coverage can begin.

Chapter 42 U.S.C. § 300gg-91(e)(6)(B) — **Employers not in existence in preceding year** — provides clarification by setting forth explicit guidelines for determining eligibility as a small employer in the current calendar year. The relevant subsection states:

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

### COMPLIANCE

A company that will not accept a small-employer application or that delays the issuance of small-employer coverage to new businesses that did not exist in the prior calendar year must

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cease these practices immediately. A carrier of small-employer health insurance must provide coverage in accordance with N.D. Cent. Code § 26.1-36.3-06 — **Availability of coverage**.

Thank you for your prompt attention to this matter. If you require additional information or clarification, please feel free to contact Vance Magnuson by phone at 701.328.2440, or by e-mail at [vmagnuso@state.nd.us](mailto:vmagnuso@state.nd.us).